IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 219 of 2001

to

FIRST APPEAL No 299 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

SPECIAL LAND ACQUISITION OFFICER

Versus

BHAGABHAI DHULABHAI PATEL & OTHERS

Appearance:
MR ARUN D OZA GOVERNMENT PLEADER for Appellant No.1
MR PR NANAVATI for Appellant No.2
MR AJ PATEL, MR DEVENDRA PATEL & MR PV NANAVATI
for Respondents.

CORAM : MR.JUSTICE M.R.CALLA
and

MR.JUSTICE D.H.WAGHELA

Date of decision: 28/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. At the very threshold of the commencement of arguments, it was pointed out by both the sides that on the date of admission of these appeals on 23.3.2001, the number of the earlier case in which the judgment had been rendered was wrongly given out as First Appeal No.6484 of 1995 and, in fact, the relevant judgment is in First appeal No.1816 of 1998 along with the other First Appeals decided on 15.12.1998.

2. All these 81 First Appeals filed under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure preferred by the Special Land Acquisition Officer, Narmada Yojna and Executive Engineer, Narmada Project Division No.4/2, Sanand, Ahmedabad, are directed against the judgment and award passed by the Assistant Judge, Mehsana on 23.2.2000 in Land Acquisition Reference Cases No.929/96 to 943/96 (15), 897/96 to 899/96 (3), 900/96 to 920/96 (21), 1360/96 to 1377/96 (18), 1389/96 to 1390/96 (2) and 1663/96 to 1684/96 (22). The lands of village Vamaj, taluka Kadi were sought to be acquired for the purpose of Narmada Canal. For that purpose, the notification under Sec.4 was issued on 30.4.1992. The notification under Sec.6 was issued on 17.10.1992. The Land Acquisition Officer had considered the matter of acquisition of the lands of village Vamaj in four groups in Land Acquisition Cases No.12/92, 13/92, 14/92 and 15/92. The award was passed in all these four matters on 24.4.1995 and the Land Acquisition Officer determined the rate of compensation as Rs.2.70 per sq. mtr. The claimants took the matter for Reference under Sec.18 claiming Rs.100/per sq. mtr., but the Reference Court determined that the land owners were entitled to an additional compensation Rs.36/- per sq. mtr. making the total of the rate as Rs.38.70 per sq. mtr. The Reference Court has placed reliance on Exhs.11 and 27, i.e. depositions of claimants Ambalal Madhavdas Patel and Dahyabhai Chaturdas Patel; village form No.7/12 at Exhs.12 and 28; maps at Exhs.14 to 15; deposition of Ashokkumar Jayashukhlal Dave at Exh.31 who had been examined on behalf of the Department. The previous award at Exh.17 passed by the Reference Court with regard to acquisition of lands of village `Karannagar', taluka Kadi in Land Acquisition Reference Cases No.3191/93 to 3205/93 wherein the lands

were acquired for the same purpose, i.e. Narmada Canal Project had also been relied upon in which case the notification under Sec.4 had been issued on 22.6.1990 and the Reference Court had determined the rate of compensation as Rs.40.60 per sq. mtr. The Reference Court also relied upon Exh.16, i.e. judgment of the High Court in First Appeals No.5347/97 to 5369/97 with Cross Appeal No.1816/98 with First Appeals No.1824/98 to 1845/98 decided on 15.12.1998 wherein the notification under Sec.4 was issued on 27.8.1990 and the lands of village `Piyaj' were acquired for the same purpose of Narmada Canal and the High Court had enhanced the rate of compensation to Rs.35/- per sq. mtr. The Reference Court has also relied upon Exh.18, i.e. Certificate of Talati cum Mantri and Exhs.19 to 21 which are bills of electric connection and AUDA map at Exh.29. On the basis of the material as aforesaid, the Reference Court, by its order and award dated 23.2.2000, has determined the rate of compensation at Rs.38.70 per sq. mtr. in all. It is this common judgment and order rendered on 23.2.2000 in 81 References which is the subject-matter of challenge in this group of 81 appeals and, therefore, we propose to decide this group of 81 appeals by this common judgment and order as under.

3. Mr.Arun D.Oza and Mr.P.R.Nanavati appearing on behalf of the appellants were at pains to argue that the village in question, i.e. Vamaj, is not a village which can be said to be situated identically with the villages Piyaj and Karannagar, which were the subject-matter of acquisition in cases of Exhs.16 and 17, which have been relied upon by the Reference Court. It has been submitted that Vamaj is a village in interior whereas the villages Piyaj and Karannagar are nearar to the highway. It has also been submitted that the deduction of Rs.2.30 per sq. mtr. as has been made by the Reference Court on account of the situation of the village Vamaj, is also arbitrary and is not based on any factual data. In sum and substance the argument is that the lands of village Vamaj, which were the subject-matter of acquisition in the present case, are not identical to that of villages Piyaj and Karannagar and, therefore, the Reference Court could not have relied upon the award which was given with regard to villages Piyaj and Karannagar.

4. Mr.A.J.Patel has invited our attention to the deposition made by Ashokkumar Jaysukhlal Dave at Exh.31 who was the witness examined on behalf of the Department itself. This witness has categorically stated in his examination-in-chief that the boundary of the village Vamaj is adjacent to the villages Karannagar, Vansol and

Piyaj. He has also stated that in comparison to village Vamaj, the village Piyaj is smaller and less developed. He has also stated that the lands which have been acquired from the village Vamaj are situated in the centre of three villages, viz. Piyaj, Karannagar and Vamaj. He has further stated that Karannagar and Vamaj are comparable villages. This witness was Deputy Executive Engineer of the Narmada Project. Mr.A.J.Patel has, therefore, submitted that the previous award and decision at Exh.16 and Exh.17 have been rightly relied upon by the Reference Court and the reasoning which has been given by the Reference Court is based on evidence. Mr.Nanavati apparing for the acquiring body has submitted that merely because the Deputy Executive Engineer has made this statement, the lands of village Vamaj could not be taken to be comparable with those of Karannagar and Piyaj.

5. Having considered the submissions made on behalf of both the sides, we do not find any reason to disbelieve the deposition of the concerned Deputy Executive Engineer of the Narmada Project itself for which the lands were acquired. He was a responsible officer working in the same project for which the lands were acquired and he has given details about the situation of the acquired lands and, therefore, we find that the lands which were acquired for this project are certainly comparable with the lands which were acquired from the villages Piyaj and Karannagar.

6. The Reference Court in para 17 of the impugned order has recorded that it was true and admitted fact by both the parties that there was a gap of two years between the publication of notification under Sec.4 (1) of the Act because notifications under Sec.4 were issued in the earlier cases in the year 1990, whereas the notification under Sec.4 in the present case has been issued in the year 1992 and, therefore, the land owners in the present case were entitled to 10% increase in the price of agricultural lands per year; if 10% rise in price in one year is adopted, the price of the acquired lands of village Piyaj as was fixed and awarded by the High Court was @ Rs.35/- per sq. mtr., which would come to about Rs.41/- per sq. mtr. approximately in the present cases. The Reference Court has also mentioned the settled principle as laid down by the Apex Court that in land acquisition cases for determination of market value of acquired lands, some guess work is certainly involved and the court can resort to such guess work which is permissible within the limits of law in absence of any specific evidence to evaluate the difference. The

Reference Court has also mentioned that the previously acquired lands were situated in the sim of village Piyaj and the presently acquired lands are situated in the sim of village Vamaj and, therefore, there might be some distance between the two sets of lands and on that account, a deduction of Rs.2.30 per sq. mtr. has been made from the market value determined on the basis of the previous award, and thereby the rate was determined as Rs.41.00 (-) Rs.2.30 = Rs.38.70 per sq. mtr. Out of this rate of Rs.38.70 per sq. mtr., an amount of Rs.2.70 per sq. mtr., as has been awarded by the Land Acquisition Officer, has been deducted which had already been paid to the claimants and thereby it has been held that the claimants were entitled to Rs.36/- per sq. mtr. in addition to the compensation which had already been paid to the claimants. In the facts of the present case, looking to the evidence which is available on record and the situation of the acquired lands of village Vamaj, the deduction of Rs.2.30 per sq. mtr., as has been made by the Reference Court, takes care of the situation of these lands of village Vamaj being little away from the highway in comparison to those of villages Piyaj and Karannagar. We, therefore, do not find that this deduction of Rs.2.30 per sq. mtr., even if made on guess work, is unreasonable or unjust in any manner. The argument that the acquired lands of village Vamaj in this case should not be treated to be comparable with that of villages Piyaj and Karannagar because the villages Piyaj and Karannagar are nearer to highway, does not impress us at all so as to take a different view for the simple reason that the lands in question are agricultural lands like the lands in the case of villages Piyaj and Karannagar and, so far as the fertility of land is concerned, whether it is nearer to highway or little away from highway, does not make any difference for the purpose of determining the rate of compensation, more particularly when the distance is very little and insignificant.

7. For the reasons aforesaid, we do not find any merit in any of these appeals. All these 81 appeals are hereby dismissed with no order as to costs.

8. Whereas the lands were acquired long back, it is expected that the due amount of compensation shall be paid to the concerned claimants within a period of three months from the date the certified copy of this order is produced before the concerned authorities by either of the parties.

Sd/-

(M.R.Calla, J.)

Sd/-

28.3.2001 (D.H.Waghela, J.)

(KMG Thilake)